

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:06-CR-161
)	(PHILLIPS/GUYTON)
JERRY HAROLD WHALEY and,)	
EDWARD WILLIAM STRICKLAND)	
)	
Defendants.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is before the undersigned on Defendant Strickland's Motion To Extend Discovery And Motion Deadlines And Continue Trial [Doc. 13] and Defendant Whaley's Motion To Extend Motion Cut-Off Deadline [Doc. 14]. Assistant United States Attorney Ed Schmutzer appeared on behalf of the government. Attorney Jonathan Moffatt was present for Defendant Whaley, who was also present at the hearing. Attorney Michael Coleman appeared on behalf of Defendant Strickland, who was not present at the hearing.

In his Motion To Extend Discovery And Motion Deadlines And Continue Trial [Doc. 13], counsel for Defendant Strickland asks the Court to extend the scheduled motion cut-off deadlines, pretrial conference and trial dates in this case. Mr. Coleman requests said extensions for numerous reasons, including his recent appointment as counsel for Defendant and the fact that he has had insufficient time to obtain or review the discovery received from the government. At the hearing, counsel for Defendant Whaley also joined in Defendant Strickland's motion [Doc. 13], as well as

requesting an extension of the motion cut-off deadline [Doc. 14]. In support thereof, Mr. Moffatt indicated to the Court that he had not been able to complete his investigation into the circumstances of the case and requested additional time within which to assess the need to file pretrial motions in this case. Mr. Moffatt also represented to the Court that he had discussed with Defendant Whaley his right to a speedy trial and that Mr. Whaley did not object to his attorney's request that the trial be continued and agreed that he wanted his trial to be continued.

The Court finds Defendant Strickland's Motion To Extend Discovery And Motion Deadline and Continue Trial [Doc. 13] and Defendant Whaley's Motion To Extend Motion Cut-Off Deadline [Doc. 14] to be well taken and finds that the ends of justice served by granting the motions outweigh the best interest of the public and Defendants in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). Noting the swiftly approaching February 5, 2007 trial date, the Court finds that the failure to grant a continuance of the trial date would deprive the parties of adequate time to assess the need to file pretrial motions in this case and to prepare for trial. See 18 U.S.C. § 3161(h)(8)(B)(iv). The Court finds that this process could not be accomplished before the February 5, 2007 court date or in less than approximately four and one-half (4.5) months. The Court finds that if the continuance were not granted a miscarriage of justice would occur. 18 U.S.C. 3161(h)(8)(B)(i). Accordingly, the Court **GRANTS** the motions [**Docs. 13 and 14**].

In light of these findings and its granting of the motions [Docs. 13 and 14], the Court set a new trial date of **June 5, 2007**. The Court further finds, and the parties agreed, that all the time between the **January 17, 2007** hearing and the new trial date of **June 5, 2007**, is fully excludable time under 18 U.S.C. § 3161(h)(8)(A)-(B). Regarding further scheduling, the Court will extend the

motion-filing deadline to **February 21, 2007**. Responses are due on or before **March 14, 2007**.

The parties are to appear before the undersigned for a pretrial conference on **May 24, 2007, at 9:30**

a.m. Additionally, reciprocal discovery is due on or before the pretrial conference date.

Accordingly, it is **ORDERED**:

(1) Defendant Strickland's Motion To Extend Discovery And Motion Deadlines And Continue Trial [Doc. 13] is **GRANTED**;

(2) Defendant Whaley's Motion To Extend Motion Cut-Off Deadline [Doc. 14] is **GRANTED**;

(3) The trial of this matter is reset to commence on **June 5, 2007, at 9:00 a.m.**, before the Honorable Thomas Phillips, United States District Judge;

(4) All the time between the **January 17, 2007** hearing and the new trial date of **June 5, 2007**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;

(5) A new motion deadline is set for **February 21, 2007**;

(6) Responses are due on or before **March 14, 2007**;

(7) A pretrial conference is set for **May 24, 2007, at 9:30 a.m.**, before the undersigned; and

(8) Reciprocal discovery is due on or before **May 24, 2007**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge